

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

3 ARCIMOTO, INC.) Docket No. WA 20-CA-176 ADA
4)
4 vs.) Waco, Texas
5)
5 AYRO, INC.) October 15, 2020

6
7 TRANSCRIPT OF VIDEOCONFERENCE MARKMAN HEARING
BEFORE THE HONORABLE ALAN D. ALBRIGHT

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13:38:25 1 THE CLERK: Markman hearing in Civil Action
13:38:25 2 W-20-CV-176, styled, Arcimoto, Incorporated vs. Ayro,
13:38:30 3 Incorporated.
13:38:31 4 THE COURT: If I could have announcements from
13:38:32 5 counsel, starting with the plaintiff. I see Mr.
13:38:36 6 Villarreal, I'm assuming he's here for the plaintiff. If
13:38:38 7 you would make announcement and then, I'll hear from the
13:38:40 8 defendant.
13:38:44 9 MR. VILLARREAL: Thank you, your Honor.
13:38:45 10 Yes. This is Jose Villarreal for Plaintiff
13:38:49 11 Arcimoto. I'm with the firm Perkins Coie. And with me, I
13:38:52 12 have Shyam Palaiyanur and Renee Rothauge, both from
13:38:54 13 Perkins Coie. I'd also like to tell the Court that there
13:38:57 14 are two client representatives here today, Mr. Mark
13:39:01 15 Frohnmayer and Mr. John Dorbin.
13:39:03 16 THE COURT: Well, Mr. Frohnmayer has a great
13:39:06 17 photo up on his screen here. So great photo with a dog.
13:39:10 18 You can't do any better than that.
13:39:12 19 So -- and for defendants? For defendants, going
13:39:28 20 once.
13:39:30 21 MR. BEARD: Thank you, your Honor.
13:39:31 22 This is Ryan Beard from Akerman. I also have
13:39:34 23 with me Ms. Bowland and Mr. Schafer, all for Ayro. And
13:39:37 24 we're working on it. It's hard to hear you on our system
13:39:40 25 for some reason.

13:39:41 1 THE COURT: Oh, okay.

13:39:42 2 MR. BEARD: So if we have to tell you we can't

13:39:44 3 hear you, we apologize.

13:39:46 4 THE COURT: No, no. So let me do this.

13:39:48 5 Suzanne, can you check and see if the same thing

13:39:50 6 on your end, and if it's not, I'll dial back in and see if

13:39:55 7 that helps.

13:40:10 8 THE CLERK: Judge, everything looks okay as far

13:40:12 9 as I can tell. I can hear you fine. So.

13:40:15 10 THE COURT: Mr. Beard, can you not hear me?

13:40:21 11 Apparently not. Okay. I'll tell you what. I'm going to

13:40:24 12 -- I'm going to leave, if I can figure out how to do that,

13:40:27 13 and then, I will -- I'll pop back in, maybe we'll see if

13:40:30 14 that helps.

13:41:02 15 Try again, Mr. Beard. Did that help?

13:41:05 16 MR. BEARD: It's very faint, your Honor. We can

13:41:06 17 hear you, it's just sometimes a little more difficult. So

13:41:10 18 we'll try to -- we're thinking about dialing in so we can

13:41:12 19 get you on audio on the phone.

13:41:14 20 THE COURT: Okay.

13:41:18 21 MR. BEARD: We can proceed while we do that.

13:41:20 22 THE COURT: Okay. Very good.

13:41:21 23 It's my understanding that there are two claim

13:41:25 24 terms that the parties would like to actually discuss at

13:41:30 25 the hearing today, after having received the Court's

13:41:33 1 preliminary constructions, and those two claim terms are,
13:41:37 2 number one, "motor" and, number two, "a three-wheeled
13:41:41 3 vehicle, comprising." With regard to the second one, the
13:41:45 4 question about -- will be whether or not the preamble is
13:41:50 5 limiting.

13:41:52 6 And so, why don't we take up "motor" first. The
13:41:58 7 Court gave it its plain and ordinary meaning. It's my
13:42:03 8 understanding that the plaintiff would like to add a
13:42:07 9 modification to what plain and ordinary meaning is.

13:42:11 10 Mr. Villarreal, will you be handling this or
13:42:14 11 someone else on your team?

13:42:16 12 MR. VILLARREAL: Your Honor, I'll be handling it.

13:42:18 13 THE COURT: Okay.

13:42:19 14 MR. VILLARREAL: Thank you, your Honor.

13:42:20 15 And if I may share the screen with some slides.

13:42:47 16 I trust that the slides are showing on the screen.

13:42:50 17 THE COURT: They are. Yes, sir. I'm going to
13:42:53 18 mute myself. But yes, they are.

13:42:55 19 MR. VILLARREAL: Thank you, your Honor.

13:42:56 20 So yes, your Honor. So the Court has given a
13:42:59 21 preliminary construction of "motor" as the plain and
13:43:02 22 ordinary meaning, and Arcimoto agrees with this, however,
13:43:07 23 we think it's important to add a point of clarification
13:43:09 24 that the plain and ordinary meaning does not include an
13:43:13 25 internal combustion engine; and the reason for this is

13:43:17 1 that a person of skill in the art would not understand
13:43:20 2 that a motor includes an internal combustion engine, and
13:43:24 3 not providing this clarification would cause confusion to
13:43:26 4 the jury.

13:43:27 5 Your Honor, Arcimoto identified the field of art
13:43:32 6 in its briefing, which is energy efficient vehicle system
13:43:38 7 design. We also identified the level of skill in the art.
13:43:41 8 And we looked at the -- at motor with the perspective of
13:43:46 9 the person of ordinary skill in the art. Now, in
13:43:50 10 contrast, Ayro through its briefing never mentioned once
13:43:53 11 what the field of art was or what the level of skill in
13:43:56 12 the art was. But looking at the intrinsic evidence, your
13:44:00 13 Honor, we feel that it amply supports this additional
13:44:04 14 clarification to the "motor" term.

13:44:07 15 As an example, the title of the patent is an
13:44:10 16 ultra efficient three-wheeled electric vehicle. Moreover,
13:44:15 17 the field of the invention, again, consistent with our
13:44:18 18 proposed field, concerns an ultra efficient vehicle,
13:44:23 19 particularly a three-wheeled electric vehicle. And your
13:44:28 20 Honor, if I may point to you the discussion of the
13:44:31 21 background, I think that is very, very useful in
13:44:35 22 understanding this because here, the patent makes a
13:44:39 23 contrast between the invention and the traditional
13:44:44 24 vehicles which it stated that have a higher energy and a
13:44:50 25 higher environmental footprint.

13:44:52 1 So the patent states that there's an increased
13:44:55 2 demand in recent years for efficient vehicles that carry a
13:44:59 3 lesser energy and lesser environmental footprint than
13:45:03 4 traditional automobiles. And what is a traditional
13:45:07 5 automobile? It's one with an internal combustion engine
13:45:11 6 that's going to have a larger environmental footprint.
13:45:14 7 That is not what the invention is about.

13:45:18 8 Another point to consider, your Honor, another
13:45:20 9 point of the intrinsic evidence that supports this
13:45:24 10 additional clarification is that nowhere within any of the
13:45:29 11 descriptions in the patent or in the claims is there any
13:45:33 12 explanation or recitation of the components that would be
13:45:37 13 normally found in a vehicle with an internal combustion
13:45:43 14 engine. And what I'm talking about are things such as a
13:45:45 15 gas tank, or a fuel tank, or a radiator, an exhaust, or
13:45:50 16 timing belts. These things are completely absent from the
13:45:53 17 patent because the patent discusses a vehicle that runs on
13:45:58 18 a motor, and a motor is not a internal combustion engine.

13:46:04 19 I'd like to also point to claim No. 1. If we
13:46:09 20 look at claim No. 1, which is not the asserted claim, if
13:46:13 21 we look at that claim and we look at the second to last
13:46:18 22 limitation, it claims the energy storage device coupled to
13:46:23 23 the motor for driving the motor. This is important
13:46:28 24 because the energy storage device as discussed in the
13:46:32 25 specification is either a battery or a fuel cell. And

13:46:37 1 here, we have the energy storage device coupled to the
13:46:41 2 motor for driving the motor. It does not say a fuel tank
13:46:44 3 or a gas tank. So this makes it clear that the motor that
13:46:48 4 we are talking about does not include an internal
13:46:53 5 combustion engine.

13:46:54 6 And, your Honor, Ayro admitted this in its
13:46:59 7 briefing. Ayro explained that claim 1 recites an energy
13:47:05 8 storage device coupled to the motor for driving the motor
13:47:08 9 and made the point, and I quote by saying, thus, the
13:47:12 10 applicants knew how to draft a claim limited to one
13:47:16 11 electrical motor. So in their view of claim 1 was
13:47:19 12 referring to an electrical motor with just the word
13:47:24 13 "motor."

13:47:25 14 Now, what's important about this is, your Honor,
13:47:28 15 that a claim should be construed in the same way across
13:47:32 16 different -- I mean, a term should be construed the same
13:47:37 17 way across different claims in the same patent.

13:47:40 18 As an example, we have the PODS vs. Porta Stor
13:47:44 19 case from the Federal Circuit where the district construed
13:47:47 20 the term "carrier frame" differently in claim 29 from
13:47:52 21 claim No. 1, and the Federal Circuit reversed and the
13:47:58 22 reason for this is that there's a presumption that the
13:48:00 23 term in different claims is going to have the same
13:48:02 24 meaning.

13:48:03 25 And that's exactly the situation that we have

13:48:05 1 here today. The motor in claim 1 is going to have the
13:48:09 2 same meaning as the motor in claim 10, and that motor does
13:48:13 3 not include an internal combustion engine. And there is
13:48:17 4 really no evidence that suggests that it should be
13:48:20 5 construed differently in the different claim -- across
13:48:23 6 both claims.

13:48:25 7 Lastly, your Honor, I'd like to point to
13:48:30 8 extrinsic evidence, and I know that carries much lesser
13:48:32 9 weight. But the important point of this definition from
13:48:35 10 the Motor Era Dictionary of Automotive Terms is that it
13:48:40 11 brings home the point that a motor is an electrically
13:48:45 12 driven power unit in that the term is often incorrectly,
13:48:48 13 but commonly, applied to an internal combustion engine.

13:48:54 14 So what we have here, your Honor, is that maybe
13:48:56 15 for a layperson, a layperson would say, well, a motor
13:49:00 16 includes an engine, but that's not what we're talking
13:49:02 17 about here, your Honor. To construe a claim, you have to
13:49:06 18 look at the claim, the claim term from the perspective of
13:49:09 19 a person of ordinary skill in the art, and such a person
13:49:14 20 would recognize that a motor does not include an internal
13:49:19 21 combustion engine.

13:49:20 22 And we submit, your Honor, that this is a very
13:49:22 23 important distinction that should be provided to the jury.
13:49:26 24 Thank you, your Honor. Your Honor, I think I lost your
13:49:38 25 audio.

13:49:42 1 THE COURT: Mr. Beard, are you going to handle
13:49:44 2 the response? Mr. Beard, you're on mute, I think.

13:49:56 3 MR. BEARD: Sorry, your Honor. We fixed the
13:49:57 4 audio issue, by the way.

13:49:57 5 THE COURT: Good.

13:50:00 6 MR. BEARD: I have Jay Schafer here from my
13:50:01 7 office. Mr. Schafer, excellent attorney, but this is his
13:50:04 8 first Markman, and I'm bringing that up because I know
13:50:07 9 from some conferences that you've had, you've noted that
13:50:10 10 it's good for attorneys to get their feet wet in these
13:50:13 11 situations and to have a Markman before the Court. He's
13:50:16 12 going to handle the arguments for us today.

13:50:18 13 THE COURT: Well, I think that's wonderful. I
13:50:20 14 hope you've warned him how awful I can be to people who
13:50:24 15 are appearing in front of me and you've given him that
13:50:28 16 warning.

13:50:31 17 MR. BEARD: Yes, I have.

13:50:32 18 THE COURT: I've learned a little bit over my two
13:50:34 19 years at one of early Markmans, some poor young attorney
13:50:41 20 got up to argue something, and I thought I was joking. I
13:50:45 21 was joking, but I said they must really hate you if
13:50:48 22 they've given you this claim term, and I think I almost
13:50:54 23 gave the person a heart attack. So I don't say that much
13:50:58 24 anymore.

13:50:58 25 But I certainly look forward to hearing someone

13:51:02 1 doing their first argument in front of me. I think that's
13:51:05 2 terrific.

13:51:06 3 MR. SCHAFER: Thank you, your Honor. My name is
13:51:08 4 Jay Schafer, as Mr. Beard said, and I'm just pulling up
13:51:13 5 the slides.

13:51:13 6 THE COURT: Look, you even wore a bowtie. I
13:51:16 7 think that's -- see, look --

13:51:19 8 MR. SCHAFER: Good decision.

13:51:19 9 THE COURT: -- you're already years ahead. So.

13:51:24 10 MR. SCHAFER: All right. Just trying to get the
13:51:26 11 screen to share here. Do you see the slides, your Honor?

13:51:57 12 THE COURT: Yes, sir.

13:51:58 13 MR. SCHAFER: All right. Thank you, sir.

13:52:01 14 So, your Honor, to begin with, the issue that
13:52:09 15 Arcimoto is bringing up for the Court today with respect
13:52:11 16 to the construction of "motor" is nothing that hasn't been
13:52:15 17 presented in the briefing. As slide 3 here shows, in each
13:52:22 18 of the three briefs, Arcimoto presented this exact
13:52:28 19 argument that the internal -- or the term "motor" cannot
13:52:33 20 include an internal combustion engine and, you know, the
13:52:37 21 various different machinations that they have presented
13:52:43 22 that argument. So again, this is nothing that you haven't
13:52:46 23 already had presented before you.

13:52:52 24 If we go to the next page, you know, looking at
13:52:57 25 the extrinsic evidence, and Mr. Villarreal addressed this,

13:53:04 1 but I think it's important to note a couple distinctions
13:53:07 2 between claim 1 and claim 10. In claim 1, the -- there's
13:53:13 3 limitations that are not found in claim 10. You have an
13:53:16 4 energy storage device specifically being coupled to the
13:53:20 5 motor to drive the motor.

13:53:22 6 In claim 10, the motor is a separate entity.
13:53:26 7 There's a different term, a battery that is only given in
13:53:31 8 relation to -- or only described in relationship to the
13:53:35 9 position of the components in the vehicle. So this is
13:53:39 10 a -- again, a different form of language that the
13:53:46 11 inventors chose, and if they had intended to have it
13:53:52 12 exactly the same as in claim 1, they obviously knew how to
13:53:56 13 do that.

13:53:57 14 Also, the -- a note that's not here on the slide
13:54:03 15 is that the preamble of claim 1 is a three-wheeled
13:54:06 16 vehicle, comprising, and then, it lists the individual
13:54:10 17 terms. It's not, you know, stating that this is limited
13:54:14 18 to the specific, you know, invention described and that it
13:54:20 19 is in some way, you know, disclaiming other types of
13:54:26 20 components or vehicles. And, you know, the claim in the
13:54:31 21 patent make no mention of brakes, but I have a pretty good
13:54:35 22 suspicion that any three-wheeled vehicle is going to have
13:54:38 23 some form of braking.

13:54:40 24 So again, we can't just say that the absence of a
13:54:44 25 particular description of components precludes him from

13:54:49 1 being in -- within the scope of particular claim terms.
13:54:55 2 And then, just looking at the permissive language that's
13:54:58 3 used in the 255 patent, the propulsion system is
13:55:03 4 preferably comprised of an electric motor. It's repeated
13:55:07 5 twice in two different parts. And the inventors used the
13:55:11 6 qualifier or the adjective electric to describe the motor.
13:55:15 7 That adjective is not in the claims.

13:55:21 8 And then, finally, the -- for this particular
13:55:25 9 point, the -- I've forgotten what my next particular point
13:55:36 10 was, so we'll move on to the next slide. Just flipping
13:55:40 11 quickly through the extrinsic evidence that --

13:55:42 12 THE COURT: Mr. Schafer, could I ask you a
13:55:44 13 question?

13:55:45 14 MR. SCHAFER: Oh, yes, sir.

13:55:46 15 THE COURT: Is it your client's position that the
13:55:54 16 plaintiff is wrong and that the plain and ordinary meaning
13:55:57 17 of motor is not a machine that converts power from one
13:56:01 18 form to another to propel a vehicle?

13:56:06 19 MR. SCHAFER: That would be consistent, your
13:56:09 20 Honor, with our client's understanding of what a motor is.
13:56:12 21 Yes. That is the plain and ordinary meaning. It's just
13:56:16 22 not limited to a particular type of vehicle. Is not
13:56:20 23 limited -- I'm sorry, particular type of conversion. It
13:56:26 24 does not have to be --

13:56:28 25 THE COURT: Well, let me break that down just a

13:56:32 1 little bit, and what I mean by that is, would one skilled
13:56:36 2 in the art reading claims 1 or 10 believe that the plain
13:56:41 3 and ordinary meaning of motor in either those claim terms
13:56:44 4 -- and I'm -- obviously the dependent claims, I get. But
13:56:48 5 is it your position -- your legal position that the plain
13:56:53 6 and ordinary meaning of motor in either of those claims is
13:56:55 7 not a machine that converts power from one form to another
13:56:59 8 to propel the vehicle?

13:57:04 9 MR. SCHAFER: It depends, I guess, to the extent,
13:57:09 10 your Honor, of what power means to convert power from one
13:57:14 11 form to another. I think a person of ordinary skill in
13:57:19 12 the art would understand that a motor does convert from
13:57:23 13 one -- energy from one form to another, and they can be a
13:57:32 14 variety of different inputs and the output would be the
13:57:35 15 rotation of a shaft.

13:57:36 16 THE COURT: I mean, a motor is not going to work
13:57:40 17 if it doesn't convert your word "energy," their word
13:57:44 18 "power," whatever, fuel, whatever you want to say, a
13:57:47 19 machine doesn't work unless it converts power from one
13:57:51 20 form -- maybe it's a gas that's being burned. Maybe it's a
13:57:56 21 a battery that's supplying electricity. Maybe it's a
13:58:02 22 rubber band that's, you know, on the little planes we used
13:58:06 23 to fly where you twist the rubber band. But the motor has
13:58:10 24 to convert power from -- or energy or something from one
13:58:14 25 form to another to pro -- in this case, the motor's being

13:58:17 1 used to propel a vehicle.

13:58:19 2 But I'm not sure why you're unhappy with that
13:58:25 3 being -- I'm not sure why exactly the plaintiff wants me
13:58:31 4 to add that, but I'm also not sure why your -- why the
13:58:37 5 defendant is opposed to it because, it seems to me, one
13:58:43 6 skilled in the art would agree that the motor that's
13:58:46 7 claimed in claims 1 and 10 is certainly a machine, machine
13:58:50 8 being -- I guess we could fuss over whether that's the
13:58:53 9 correct word, but it seems to be pretty close. Seems to
13:58:58 10 be a machine that converts power from one form to another
13:59:01 11 to propel a vehicle. In this case, that's what it's
13:59:03 12 doing.

13:59:03 13 How is that not the plain and ordinary meaning?
13:59:06 14 I worry why the plaintiff wants it and I worry why you
13:59:10 15 don't.

13:59:13 16 MR. SCHAFER: Well, we do think that it's the
13:59:14 17 plain and ordinary meaning, and that's not really where
13:59:16 18 the dispute lies, your Honor. I agree completely with
13:59:20 19 what you -- how you characterize what a person of ordinary
13:59:24 20 skill in the art would understand with respect to the word
13:59:28 21 "motor" in both claims 1 and 10. I think the plaintiff's
13:59:34 22 position is to limit the scope of motor and what a person
13:59:39 23 of ordinary skill would understand to exclude a certain
13:59:43 24 type of motor or certain type of power conversion from one
13:59:48 25 form to another, if you will.

13:59:50 1 THE COURT: What motor for a vehicle is able to
13:59:58 2 move -- is able to propel the vehicle unless it converts
14:00:03 3 something from one form to another to create energy? Is
14:00:07 4 there a motor out there that can do that?

14:00:12 5 MR. SCHAFER: I am not aware of one that can do
14:00:14 6 that. It does not --

14:00:16 7 THE COURT: Again, let me tell you why I'm
14:00:17 8 thinking of adding this in its -- I didn't think it needed
14:00:22 9 the added one that we called in, but because, like I said,
14:00:27 10 I worried why the plaintiff would want it. But I can't --
14:00:32 11 I fear that if I don't include it, even though I think
14:00:36 12 this is the plain and ordinary meaning of what a motor is
14:00:39 13 and I don't think you've argued very vigorously against
14:00:43 14 that, I feel like maybe I need to include it to make sure
14:00:47 15 the defendant doesn't say this is wrong if the plaintiff
14:00:50 16 takes this position because I think that is the plain and
14:00:54 17 ordinary meaning.

14:00:55 18 And I would -- I just got through a trial and,
14:00:57 19 I'll tell you, we had a huge fight because there was a
14:01:03 20 claim term that we had plain and ordinary meaning, and
14:01:06 21 then, there was a huge fight over whether or not the --
14:01:12 22 one of the elements in the Roku product actually was or
14:01:17 23 wasn't that in terms of plain and ordinary meaning.

14:01:20 24 And I -- I don't know that this adds anything,
14:01:25 25 but I know that I can picture now if I'm reading the claim

14:01:29 1 terms to the jury, which I do, and attach them with the
14:01:32 2 verdict, which I do, I think the plaintiff is correct that
14:01:39 3 a plain and ordinary meaning of motor is a machine that
14:01:42 4 converts power from one form to another to propel a
14:01:45 5 vehicle.

14:01:46 6 If the defendant is not going to argue that
14:01:50 7 that's wrong, I might not include it. But if the
14:01:54 8 plaintiff's going to take the position that a motor -- I'm
14:01:59 9 sorry. If the defendant is going to take the position for
14:02:03 10 infringement or validity that the element of claim 1 or 10
14:02:09 11 includes a motor is not a machine that converts power from
14:02:12 12 one form to another to propel a vehicle, then I think I
14:02:15 13 would include it.

14:02:19 14 MR. BEARD: Your Honor, if I may, this is Ryan
14:02:21 15 Beard.

14:02:21 16 THE COURT: Yes.

14:02:22 17 MR. BEARD: The issue before the Court is whether
14:02:24 18 or not motor or the term that the plaintiff has proposed,
14:02:26 19 whether or not that includes or excludes an internal
14:02:30 20 combustion engine. It's our position that the term
14:02:33 21 "motor" at its plain and ordinary meaning, and we agree
14:02:37 22 with the construction that the plaintiff has proposed, the
14:02:40 23 definition that he says plain and ordinary meaning.
14:02:42 24 However, our concern is that if you adopt the plaintiff's
14:02:45 25 construction, they're going to take the position that an

14:02:48 1 internal combustion engine does not fall within the scope
14:02:52 2 of the claims, and that's the issue for the Court.

14:02:54 3 So it's not the words that they're using, it's
14:02:56 4 the meaning that they have put behind those words. And
14:03:00 5 that issue is what we've argued about in the briefing.

14:03:03 6 This is, again, nothing new. This is -- all of the
14:03:06 7 argument you've seen from the plaintiff has been made in
14:03:10 8 the briefing, and that's really the issue for the Court.
14:03:14 9 It's not whether or not their words are correct or our
14:03:16 10 words are correct. It's whether or not internal
14:03:18 11 combustion engines is a motor or not.

14:03:21 12 THE COURT: Okay. I'm going to put you on hold
14:03:23 13 for a second and talk to Josh because I don't want to
14:03:28 14 leave here pretending that we don't know what the elephant
14:03:33 15 is in the room then. So let me go talk to Josh.

14:03:39 16 MR. VILLARREAL: Your Honor.

14:03:40 17 THE COURT: Yes, sir.

14:03:40 18 MR. VILLARREAL: May I answer?

14:03:41 19 THE COURT: Oh, well, go ahead. Go ahead.

14:03:45 20 What I'm thinking about doing is taking this
14:03:48 21 issue up very early in the case if we need to.

14:03:53 22 But, Mr. Villarreal, you're certainly welcome to
14:03:56 23 say whatever you'd like.

14:03:57 24 MR. VILLARREAL: Thank you, your Honor.

14:03:57 25 Just very narrow as to your question about the

14:04:01 1 motor and the internal combustion engine issue, so we
14:04:06 2 agree, your Honor, our construction of a motor is the
14:04:12 3 plain and ordinary meaning. The issue is that we require
14:04:17 4 additional clarification that it does not include an
14:04:19 5 internal combustion engine for the simple question -- I
14:04:22 6 can answer what you asked. And we have this in our brief,
14:04:25 7 your Honor.

14:04:25 8 The internal combustion engine converts chemical
14:04:32 9 -- a chemical fuel source, which is gasoline, into
14:04:36 10 mechanical power, and it performs a chemical reaction to
14:04:39 11 do so. This is not what a motor does. A motor transforms
14:04:45 12 some sort of power, such as electrical power, into
14:04:50 13 mechanical paperwork, in this case, to propel the vehicle.
14:04:53 14 So it's a power conversion. An engine is a different type
14:04:57 15 of device that requires a chemical reaction that will then
14:05:02 16 create some sort of energy.

14:05:05 17 So that's why an engine, it's just -- it looks
14:05:11 18 different. It has different components such as a
14:05:15 19 radiator, exhaust, and so on. It's a different thing that
14:05:17 20 would not be included within the scope of a motor from the
14:05:21 21 view of a person of ordinary skill in this art. And I
14:05:27 22 will admit to your Honor, a layperson, for a layperson, I
14:05:31 23 have heard it out in the street that a motor is an engine,
14:05:34 24 but that is not what we are talking about here, your
14:05:37 25 Honor. We're talking about how one of ordinary skill in

14:05:40 1 the art would interpret this term in view of the intrinsic
14:05:44 2 evidence.

14:05:45 3 THE COURT: Well, I have to tell you that, you
14:05:50 4 know, there are a lot of times when I'm dealing with
14:05:55 5 source code, or hardware, or biology, or something where I
14:06:05 6 think we care what one skilled in the art would think. I
14:06:09 7 think the word "motor" is going to be one that an awful
14:06:11 8 lot of people -- an awful lot of people are going to feel
14:06:17 9 like they know what the word means.

14:06:20 10 And so, here's what I'm going to do. I am going
14:06:30 11 to include the construction the plain and ordinary meaning
14:06:35 12 of motor is a machine that converts power from one form to
14:06:37 13 another to propel a vehicle. Is that -- that's just a
14:06:42 14 statement that I think is correct.

14:06:46 15 If the plaintiff takes a position with regard to
14:06:51 16 the inclusion or exclusion of any kind of engine, I won't
14:07:00 17 say -- I won't be even more specific than that. If the
14:07:02 18 plaintiff takes a position that the defendant thinks with
14:07:05 19 regard to what is or is not a motor in this case, then
14:07:11 20 what we need to do is, at that time, when the plaintiff
14:07:17 21 prepares their expert report, then you exchange it, or the
14:07:20 22 defendant prepares their validity report, and if there is
14:07:25 23 a fight over the fight that we're having here where does
14:07:30 24 the plain and ordinary meaning of motor include either
14:07:35 25 what the plaintiff is claiming it includes or the

14:07:38 1 plaintiff is claiming it excludes, whatever that is, where
14:07:43 2 I need -- that's not a question of fact for the jury, but
14:07:46 3 that's a question of law for me, then once you get those
14:07:51 4 expert reports, whoever is unhappy about the position the
14:07:55 5 other side is taking, contact me and we will set up --
14:08:01 6 I'll look at how it's being used by the parties, and if we
14:08:05 7 need to, we'll have another mini Markman at that time, and
14:08:09 8 I'll determine -- I'll determine whether or not one side
14:08:13 9 or the other's construction is correct.

14:08:17 10 So you guys have given -- spotted for me what the
14:08:21 11 issue's going to be. Obviously if one side or the other
14:08:27 12 decides to take an over -- what might be an overly
14:08:32 13 aggressive position either with respect to infringement or
14:08:35 14 non-infringement, validity, invalidity, the price they may
14:08:40 15 pay is if I have that mini Markman, their construction use
14:08:47 16 and how they -- I forgot how their experts say may get
14:08:52 17 struck at that point, which would not be a good point to
14:08:55 18 have it struck at.

14:08:55 19 So I'm going to make the final claim construction
14:09:00 20 for "motor" plain and ordinary meaning. The plain and
14:09:04 21 ordinary meaning of motor is a machine that converts power
14:09:06 22 from one form to another to propel a vehicle.

14:09:11 23 With respect -- let's move, then, to "a
14:09:15 24 three-wheeled vehicle, comprising." The argument is
14:09:19 25 essentially that the preamble is limiting or not. I will

14:09:25 1 tell you that this morning, my law clerks and I had a
14:09:30 2 robust 45-minute discussion on this issue, and there is
14:09:34 3 not consensus within the chambers.

14:09:38 4 And so, right now, it's a jump fall. I'm happy
14:09:43 5 to hear from both sides. Whoever wants to -- I'll go --
14:09:49 6 I'll allow the plaintiff to go first and argue why they
14:09:52 7 believe the preamble is limiting, then I'll hear from
14:09:55 8 defendants as to why they think it's nonlimiting, and
14:09:59 9 then, we'll go from there. So whoever's going to argue
14:10:02 10 this for the plaintiff, I invite you to do so now.

14:10:04 11 MR. VILLARREAL: Thank you, your Honor. This is
14:10:05 12 Jose Villarreal.

14:10:07 13 Mr. Shyam Palaiyanur, an associate at my firm, is
14:10:11 14 going to address the preamble limitation.

14:10:14 15 THE COURT: Two associates in one hearing. This
14:10:17 16 is wonderful for me. I'm glad we're able to do this.

14:10:24 17 MR. PALAIYANUR: May it please the Court, Shyam
14:10:27 18 Palaiyanur on behalf of Plaintiff Arcimoto.

14:10:28 19 Can you see my slides, your Honor?

14:10:29 20 THE COURT: Yes, sir, I can.

14:10:30 21 MR. PALAIYANUR: Great. I will be arguing the
14:10:34 22 claim term, "a three-wheeled vehicle, comprising." This
14:10:38 23 is the preamble for claim 10.

14:10:44 24 Your Honor, the Court issued its preliminary
14:10:47 25 construction, which is the preamble is nonlimiting, and I

14:10:50 1 just want to bring the Court's attention to one specific
14:10:55 2 case. So I will keep my argument short, your Honor.

14:10:58 3 THE COURT: Okay.

14:10:59 4 MR. PALAIYANUR: We believe that this Federal
14:11:01 5 Circuit authority is directly on point, and the Federal
14:11:05 6 Circuit in that case reversed a lower court ruling that
14:11:08 7 the preamble was nonlimiting. The case, your Honor, is In
14:11:15 8 Re: Fought, and in that case, the preamble was a travel
14:11:18 9 trailer, and there were two considerations that the
14:11:20 10 Federal Circuit made.

14:11:21 11 First, the Federal Circuit found the preamble was
14:11:26 12 limiting because it served antecedent basis. And the
14:11:29 13 second consideration, your Honor, was the Federal Circuit
14:11:33 14 found that a travel trailer was a specific type of
14:11:37 15 recreational vehicle. Now, based on these two
14:11:40 16 considerations, the Federal Circuit found that the
14:11:43 17 preamble "a travel trailer" was limiting.

14:11:48 18 Your Honor, these two considerations apply
14:11:51 19 directly to our case. And on slide 13, I have claim 10,
14:11:56 20 which shows that the preamble "three-wheeled vehicle"
14:12:01 21 serve as antecedent basis to the term "the vehicle," which
14:12:04 22 is used six times in the body of the claims. The second
14:12:09 23 point, your Honor, is that a three-wheeled vehicle is a
14:12:12 24 specific type of vehicle, a specific structure for a
14:12:17 25 vehicle, and we know that because in the patent, it calls

14:12:21 1 it out as a three-wheeled electric vehicle.

14:12:24 2 And also, in the field of the invention, the

14:12:26 3 invention -- the invention is directed to particularly a

14:12:32 4 three-wheeled electric vehicle. And, your Honor, a

14:12:38 5 three-wheeled vehicle is a vehicle with exactly three

14:12:40 6 wheels. It does not include four wheels, it does not

14:12:44 7 include five wheels; it includes exactly three wheels.

14:12:48 8 Every single embodiment in this patent has exactly three

14:12:52 9 wheels. And so, that's a particular structure.

14:12:58 10 Now, what Ayro is trying to do, your Honor, is to

14:13:02 11 bring in prior art that has a vehicle with four wheels.

14:13:07 12 Well, that is a different structure, your Honor. And the

14:13:09 13 Federal Circuit case of In Re: Fought tells us that that's

14:13:12 14 a different structure. And that's my argument, your

14:13:16 15 Honor.

14:13:18 16 THE COURT: Thank you, sir.

14:13:22 17 And for defendant.

14:13:29 18 MR. BEARD: Thank you, your Honor. For this

14:13:31 19 argument, we're going to go for three new people. Ms.

14:13:33 20 Bowland is going to handle it.

14:13:35 21 MS. BOWLAND: Good afternoon, your Honor.

14:13:37 22 One moment while I try and get the slides up

14:13:40 23 here.

14:13:42 24 THE COURT: Okay.

14:13:43 25 MS. BOWLAND: Although, I don't -- there we go.

14:13:45 1 THE COURT: Ms. Bowland, which of the offices are
14:13:48 2 you in?

14:13:49 3 MS. BOWLAND: I'm in the Chicago office, your
14:13:51 4 Honor.

14:13:51 5 THE COURT: Very good.

14:13:56 6 MS. BOWLAND: Can you see that, your Honor?

14:14:14 7 THE COURT: Yes, ma'am.

14:14:15 8 MS. BOWLAND: Your Honor, as a preliminary matter
14:14:18 9 and I think we already covered this, but all of these
14:14:21 10 arguments are already covered in plaintiff's briefing. So
14:14:24 11 our response is going to be brief, as well. It's more
14:14:28 12 complete in the briefing itself.

14:14:30 13 First, looking at claim -- or at slide 16,
14:14:36 14 counsel mentioned In Re: Fought, and in that case, it
14:14:40 15 involved a travel trailer, and the travel trailer portion
14:14:43 16 was included in the preamble. And the Court found
14:14:47 17 factually that the term "travel trailer" includes inherent
14:14:52 18 structural limitations, including towability and living
14:14:56 19 area, that were not included in the claim body.

14:15:00 20 And I apologize, I don't have a slide for this,
14:15:02 21 your Honor, but that case -- for example, claim one of
14:15:14 22 that case recited, a travel trailer having a first and
14:15:17 23 second compartment therein separated by a wall assembly
14:15:22 24 which is movable so as to alter the relative dimensions of
14:15:23 25 the first and second compartments without altering the

14:15:25 1 exterior appearance of the travel trailer. So there's
14:15:27 2 nothing in there about towability and there's nothing in
14:15:29 3 there about a living area, in particular. There's some
14:15:32 4 things about areas, but not about living areas in
14:15:34 5 particular.

14:15:35 6 Our case is different. We have a very simple
14:15:39 7 preamble, a three-wheeled vehicle, comprising, and those
14:15:43 8 wheels are claimed in the body of the claims themselves.
14:15:48 9 So we go back and look at -- and it appears my slides got
14:15:53 10 a little messed up, your Honor. I apologize for that.
14:15:56 11 But if we go back and look at claim 10, there's no
14:15:59 12 necessary antecedent basis here. The three wheels
14:16:02 13 themselves are also -- they're included in the body of the
14:16:05 14 claim. So there's no need for that.

14:16:07 15 And then, the only other thing left is the
14:16:10 16 vehicle. But if you take "the" out of the claim and put
14:16:16 17 "a" in, it remains structurally the same vehicle that it
14:16:20 18 was before. So it's not necessary -- a three-wheeled
14:16:25 19 vehicle does not provide necessary antecedent basis for
14:16:28 20 the body of the claim. And to sort of pile on that a
14:16:33 21 little bit, Catalina tells us that if you delete the
14:16:39 22 disputed phrase from the preamble and it doesn't affect
14:16:42 23 the structural definition or operation of the invention,
14:16:46 24 then the preamble is not limiting.

14:16:48 25 And here, if you just took out a three-wheeled

14:16:51 1 vehicle entirely, you would still have a chassis that's
14:16:55 2 part of a vehicle, three wheels coupled to that chassis, a
14:16:59 3 transmission, a motor, a battery, all of the things that
14:17:02 4 make up the claimed invention. So again, the preamble is
14:17:08 5 not limiting because it is -- if you take it out, it
14:17:12 6 doesn't change the structure of the claims.

14:17:16 7 And finally, counsel made an argument that
14:17:25 8 including four-wheeled vehicles in the prior art would be
14:17:29 9 inappropriate, and that's why they are saying that the
14:17:32 10 preamble of claim 10 is limiting. However, the 255 patent
14:17:37 11 itself tells us that four-wheeled vehicles are part of the
14:17:40 12 prior art. It says examples in the prior art include and
14:17:45 13 then, goes on to describe such vehicles have three or more
14:17:48 14 wheels.

14:17:48 15 So the 255 patent itself anticipates that similar
14:17:55 16 prior art would include more than three wheels. And
14:18:00 17 again, I apologize, your Honor, this got a little messed
14:18:02 18 up. But you can see here, here's two of the patents that
14:18:05 19 are specifically called out by the 255 patent as prior
14:18:10 20 art, and both of them clearly show or describe four wheels
14:18:13 21 of the vehicle.

14:18:14 22 With that, your Honor, I'm happy to answer any
14:18:17 23 questions you may have.

14:18:20 24 THE COURT: Any response? Any rebuttal?

14:18:25 25 MR. PALAIYANUR: Yes, your Honor.

14:18:26 1 I would just like to make a couple of points.

14:18:31 2 The first point, your Honor, is that counsel for Ayro made

14:18:37 3 the point that deletion of the preamble does not change

14:18:40 4 the structure. We strongly disagree with that, your

14:18:42 5 Honor, because if you delete the preamble, you can go from

14:18:44 6 a vehicle with three wheels to a vehicle with four wheels.

14:18:50 7 Simply claiming in the body the vehicle or three wheels

14:18:55 8 doesn't give you the structure of a three-wheeled vehicle,

14:19:00 9 which is a very particular type of vehicle, your Honor.

14:19:02 10 When I drove my Prius into work today, it has the

14:19:07 11 structure of three wheels and it has the structure of a

14:19:11 12 vehicle, but it does not have the structure of a

14:19:15 13 three-wheeled vehicle, your Honor, which is a vehicle that

14:19:19 14 has exactly three wheels.

14:19:22 15 The second point I want to make, your Honor, is

14:19:24 16 In Re: Fought is not distinguishable. And in fact, the

14:19:28 17 distinction that counsel for Ayro has made is exactly a

14:19:33 18 distinction that the Court rejected -- the Federal Circuit

14:19:36 19 rejected in In Re: Fought. The distinction that Ayro

14:19:40 20 wants to make is that a three-wheeled is not -- does not

14:19:45 21 provide structure, and instead, it's simply an intended

14:19:50 22 use.

14:19:51 23 Actually, in In Re: Fought, the Court found that

14:19:53 24 the vehicle was a particular type of vehicle. Just in our

14:19:57 25 case, a three-wheeled vehicle is a particular type of

14:19:59 1 vehicle, and it's not a statement of intended use. So
14:20:04 2 that distinction has already been rejected by the Federal
14:20:06 3 Circuit.

14:20:08 4 And the last point I want to make is that counsel
14:20:11 5 for Ayro brought up a section of the patent that talked
14:20:16 6 about three or more vehicles being prior art to the 255
14:20:22 7 patent. That passage says nothing about the structure of
14:20:26 8 a three-wheeled vehicle, and that's why we think it's
14:20:29 9 inappropriate to bring in prior art with four wheels to
14:20:33 10 meet the three-wheeled structure, your Honor. That's all.

14:20:38 11 THE COURT: Anything else?

14:20:41 12 MS. BOWLAND: Your Honor, just one point of
14:20:43 13 clarification.

14:20:43 14 If I said that the structure was the same here in
14:20:46 15 the preamble, then I misspoke. What I meant was that if
14:20:48 16 you remove the preamble, you still have a structurally
14:20:51 17 complete device, which is what is the test in Catalina,
14:20:56 18 not that it's the exact same vehicle.

14:20:58 19 THE COURT: And that's the way I took what you
14:21:00 20 said. So anything else?

14:21:04 21 MS. BOWLAND: Not from me, your Honor.

14:21:06 22 THE COURT: Okay. I'll be back in just a minute
14:21:07 23 or two.

14:21:10 24 MR. PALAIYANUR: Thank you, your Honor.

14:26:29 25 THE COURT: If we could go back on the record,

14:26:31 1 please.

14:26:43 2 The Court is going to find that the preamble is
14:26:47 3 limiting, but only with respect to the word "vehicle" and
14:26:53 4 not to the claim "a three-wheeled vehicle." I find that
14:26:59 5 the -- there's an element within the -- relevant claims
14:27:05 6 that discloses the concept of the name "three wheel," but
14:27:10 7 I do believe it has -- it must be limiting with respect to
14:27:13 8 that the claimed invention is a vehicle comprising. So
14:27:17 9 that will be my construction.

14:27:20 10 Is there -- let me ask you this, Mr. Villarreal,
14:27:23 11 or, Mr. Beard: Have we set a trial in this case?

14:27:28 12 MR. VILLARREAL: I don't think so, your Honor.
14:27:29 13 We have not.

14:27:29 14 THE COURT: Okay. Give me -- yes.

14:27:34 15 MR. BEARD: I was going to say, I think that's
14:27:36 16 correct, your Honor.

14:27:37 17 THE COURT: Give me one second. Is there just
14:27:38 18 this one patent in the case?

14:27:42 19 MR. VILLARREAL: Yes, your Honor.

14:27:42 20 MR. BEARD: Yes, your Honor.

14:27:42 21 THE COURT: Okay. Give me one -- I'll be right
14:27:46 22 -- again, I'll be right back. I have to check with Josh
14:27:48 23 and see what our schedule is.

14:29:56 24 We're back on the record. I can't tell by the
14:29:58 25 names of the parties, are either of the companies foreign

14:30:02 1 companies? And what I mean by that is, would there be
14:30:05 2 discovery that had to take place outside of the United
14:30:08 3 States?

14:30:10 4 MR. VILLARREAL: Your Honor, not as far as we
14:30:11 5 know. Arcimoto is an Oregon company, and we're not aware
14:30:15 6 of any discovery that's foreign.

14:30:17 7 THE COURT: For some reason, Arcimoto sounded
14:30:19 8 Japanese to me. I thought you might have to go do
14:30:21 9 discovery in Asia. So -- and do either of you perceive
14:30:28 10 that you're going to have a difficult time with discovery,
14:30:32 11 because of the COVID situation, in terms of getting the
14:30:36 12 initial discovery done?

14:30:40 13 MR. VILLARREAL: I don't anticipate so, your
14:30:42 14 Honor.

14:30:42 15 THE COURT: Mr. Beard?

14:30:44 16 MR. BEARD: Your Honor, it's hard for me to say,
14:30:46 17 to really be honest with you. I have some colleagues that
14:30:50 18 have done depositions and it's been cumbersome to get
14:30:52 19 those. That's one thing I think is really difficult for
14:30:56 20 the parties to do. But I can't really say one way or
14:30:59 21 another, and I haven't really gotten into discovery at
14:31:02 22 this level on any case during COVID.

14:31:04 23 THE COURT: Here's what I'm going to do. I'm
14:31:07 24 going to set this for July 19th. I realize that's a
14:31:12 25 relatively short time period. And so, if one or the other

14:31:16 1 of you -- I don't mean to use a pun -- discovers that
14:31:24 2 you're unable to get discovery done because of the
14:31:29 3 restrictions that we have, I mean, there are people who
14:31:31 4 can't travel, or y'all can't travel, or if there's some
14:31:36 5 issue that is going to make it hard on one or the other or
14:31:40 6 both parties to get discovery done, let me know as soon as
14:31:45 7 you realize that's a problem, and I'll work on adjusting
14:31:49 8 the trial schedule at that time.

14:31:51 9 It seems to, me, with this particular patent, in
14:31:54 10 normal times, this would be enough time to get to trial.
14:31:57 11 But if there's an issue I'm not aware of that you come
14:32:02 12 across, you can let us know.

14:32:06 13 MR. VILLARREAL: Your Honor, if I may.

14:32:07 14 THE COURT: Yes, sir.

14:32:08 15 MR. VILLARREAL: Your Honor, the scheduling order
14:32:12 16 has already a series of dates going through August and
14:32:15 17 September. The motions in limine date is September 16th,
14:32:23 18 2021, so we're going to have to reconcile that.

14:32:28 19 THE COURT: Yeah. What y'all will need to do is
14:32:30 20 just take that July 19th date and get together and figure
14:32:34 21 out how to get everything done by then.

14:32:38 22 MR. VILLARREAL: And, your Honor, my colleague is
14:32:41 23 going to be part of the trial team. I just want to confer
14:32:44 24 with Ms. Rothauge that she has no conflicts with that
14:32:48 25 date.

14:32:48 1 THE COURT: Absolutely. Everyone, if you have a
14:32:51 2 conflict, if you're in someone else's court already on
14:32:53 3 that date or the week before, whatever, let me know now,
14:32:55 4 and I'll be happy to adjust it now.

14:33:01 5 MS. ROTHauge: This is Renee Rothauge and I do
14:33:02 6 not have any conflict on that day. Thank you.

14:33:04 7 THE COURT: Mr. Beard, do you have any conflicts
14:33:06 8 on that date?

14:33:07 9 MR. BEARD: I don't know of any right now, your
14:33:10 10 Honor, but I would have to look at our schedule. I just
14:33:13 11 don't have that in front of me right now. And we'll look
14:33:15 12 at it and if we have an issue, we'll get to you.

14:33:17 13 THE COURT: Very good. And what I mean a
14:33:19 14 legitimate issue is, if you're set for trial on the 19th,
14:33:23 15 or the week before, or something, where I want to
14:33:26 16 certainly be respectful of that type of issue for --
14:33:30 17 especially for lead counsel.

14:33:32 18 Is there anything else that we need to take up?

14:33:35 19 MR. VILLARREAL: Your Honor.

14:33:36 20 THE COURT: Yes.

14:33:37 21 MR. VILLARREAL: This is Mr. Villarreal.

14:33:38 22 Just one thing, your Honor, just to have the
14:33:40 23 record reflect that Arcimoto preserves its constructions
14:33:46 24 as briefed for appeal, including its alternative
14:33:48 25 construction for "floor deck" as a floor level surface,

14:33:52 1 which was included in part of the briefings. Thank you,
14:33:55 2 your Honor.

14:33:55 3 THE COURT: And thank you for making sure that
14:33:56 4 was on the record. I should have done that. I certainly
14:33:59 5 want everyone to protect their record.

14:34:02 6 Anything from you, Mr. Beard?

14:34:04 7 MR. BEARD: Yes, sir. We have the same
14:34:05 8 reservation with respect to our constructions. And I did
14:34:09 9 have a question for you.

14:34:11 10 THE COURT: Sure.

14:34:11 11 MR. BEARD: Your construction of "floor deck" was
14:34:14 12 the plain and ordinary meaning. So we take that to mean
14:34:17 13 that you are construing that floor deck to be the floor
14:34:20 14 deck.

14:34:25 15 THE COURT: Correct.

14:34:27 16 MR. BEARD: Okay. Good.

14:34:30 17 And then, the other question we had, your Honor,
14:34:32 18 just to get some color on what we think should --

14:34:34 19 THE COURT: Well, Mr. Beard, let me interrupt
14:34:37 20 you. The same thing, though, applies to floor deck as
14:34:43 21 applies to motor. If when you exchange -- when the
14:34:48 22 plaintiff gives you their infringement report from its
14:34:51 23 expert or when -- Mr. Villarreal, when Mr. Beard gives you
14:34:54 24 the invalidity report from his expert, if what you see is
14:35:00 25 that there is a fight over whether or not the other side

14:35:06 1 has appropriately used the plain and ordinary meaning of
14:35:10 2 floor deck, then you need to immediately let me know.

14:35:16 3 MR. BEARD: Yes, your Honor.

14:35:17 4 THE COURT: I don't want -- I just had a trial
14:35:19 5 where they were cross-examining experts about the correct
14:35:23 6 meaning of one of the claim terms. Even though it had a
14:35:26 7 plain and ordinary meaning and even though the parties had
14:35:28 8 agreed as to what the plain and ordinary meaning was, we
14:35:32 9 still had a lot of fighting over what it was.

14:35:36 10 So if in any of these claim terms, either of you
14:35:40 11 believe that the other side has used an incorrect -- that
14:35:48 12 what they're saying the plain and ordinary meaning of any
14:35:50 13 of these terms is floor deck, or any of the others, that's
14:35:54 14 the time to raise it with me, and I'll take it up right
14:35:56 15 then. I'm not going to take it up at trial.

14:36:00 16 MR. BEARD: Yes, your Honor. And we're going to
14:36:01 17 probably file a motion for summary judgment on that issue.
14:36:03 18 So I'm sure this will come up well before trial.

14:36:06 19 THE COURT: Okay.

14:36:07 20 MR. BEARD: And then, the other question we had
14:36:09 21 was just are you going to issue an order that will go
14:36:12 22 through the Court's analysis reaching these claim
14:36:14 23 constructions? Or will it be a more short form where you
14:36:18 24 just have a kind of a chart you had in your preliminary
14:36:22 25 analysis and say, this is my claim construction?

14:36:24 1 THE COURT: Yes. We're going to do both. You're
14:36:26 2 going to have this order, and then, usually we get out
14:36:29 3 within about a month, a more robust order setting out the
14:36:33 4 claims -- setting out the reasons for the -- that won't be
14:36:38 5 out for about a month, but we do the full -- we will do a
14:36:41 6 full order for you.

14:36:44 7 MR. BEARD: Great. Thank you, your Honor.

14:36:45 8 That's all I have.

14:36:45 9 THE COURT: No. That's a good question.

14:36:47 10 The purpose of getting this done is that so that
14:36:49 11 you guys can start discovery now, knowing what the claim
14:36:52 12 terms -- how they've been construed. But we'll get you
14:36:56 13 that order as soon as we can.

14:36:59 14 Anything else?

14:37:00 15 MR. VILLARREAL: Yes, your Honor. As to
14:37:02 16 discovery, when is it considered officially open?

14:37:05 17 THE COURT: At 2:38 p.m. central time on October
14:37:12 18 14th.

14:37:16 19 MR. VILLARREAL: Thank you, your Honor.

14:37:18 20 THE COURT: The stay is lifted.

14:37:21 21 Anything else?

14:37:24 22 MR. BEARD: No, your Honor.

14:37:24 23 THE COURT: Okay. You all be safe out there. I
14:37:26 24 hope to see at least some of you in person soon. Take
14:37:29 25 care.

14:37:31 1 MR. BEARD: Thank you, your Honor.
14:37:32 2 MR. VILLARREAL: Thank you, Judge Albright.
14:37:33 3 THE COURT: Thank you.
4 (Proceedings concluded.)
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4 UNITED STATES DISTRICT COURT)

5 WESTERN DISTRICT OF TEXAS)

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7 I, LILY I. REZNIK, Certified Realtime Reporter,
8 Registered Merit Reporter, in my capacity as Official
9 Court Reporter of the United States District Court,
10 Western District of Texas, do certify that the foregoing
11 is a correct transcript from the record of proceedings in
12 the above-entitled matter.

13 I certify that the transcript fees and format comply
14 with those prescribed by the Court and Judicial Conference
15 of the United States.

16 WITNESS MY OFFICIAL HAND this the 26th day of October,
17 2020.

18

19

20

/s/Lily I. Reznik

21

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